

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELDING FUME PRODUCTS)	Case No. 1:03-CV-17000
LIABILITY LITIGATION)	(MDL Docket No. 1535)
)	
)	
THIS DOCUMENT RELATES TO:)	JUDGE O'MALLEY
)	
<i>See Exhibit A to Plaintiffs' Counsel's</i>)	
<i>Motion to Withdraw</i>)	
)	

DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Pursuant to Fed. R. Civ. P. 41(b), defendants respectfully move for dismissal without prejudice of the above-captioned cases for failure to prosecute.

On August 16, 2006, the Kaiser and Climaco firms filed a joint motion to withdraw as counsel for 41 individual plaintiffs with cases pending in the MDL. Counsel seek to withdraw from their representation of these plaintiffs because the plaintiffs have "refused or failed to participate in their lawsuit[s]." (Mot. to Withdraw at 1 (MDL docket no. 1880).) Given that these plaintiffs' own counsel have acknowledged their lack of desire to prosecute, the Court should dismiss these cases without prejudice for want of prosecution. *See Roberts v. General Motors Corp.*, No. Civ. A. 2:04 CV 44 DF, 2005 WL 1077639 (E.D. Tex. May 6, 2005) (granting plaintiff's counsel's motion to withdraw and dismissing plaintiff's case without prejudice for failure to prosecute because plaintiff did not indicate that she desired to move forward with her claim).

In similar circumstances, on May 17, 2006, the Court granted defendants' motion to dismiss 1,598 plaintiffs severed from the *Adames* complaint. (MDL docket no. 1791.) On August 9, 2006, the Court granted a similar motion to dismiss an additional 48 plaintiffs severed from the *Adames* complaint. (MDL docket no. 1868.) Like the plaintiffs dismissed by the Court's May 17th and August 9th Orders, the plaintiffs here have demonstrated a lack of desire to move forward with their cases. As Counsel's Motion to Withdraw makes clear, "none of the plaintiffs, with the exception of a very few, have indicated that they want to continue to prosecute their claims." (Mot. to Withdraw at 2.) Furthermore, "[e]ven the few that have indicated a desire to continue their claims have failed to provide substitute counsel although being given ample opportunity to do so." (*Id.*)

For the foregoing reasons, defendants request that the Court dismiss the cases in Exhibit A of plaintiffs' counsel's Motion to Withdraw.

Dated: August 18, 2006

Respectfully submitted,

s/ John H. Beisner
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DEFENDANTS' LIAISON
COUNSEL

Exhibit A

Client Name	Cause Number
Addison, Charles	1:05-CV-18618
Alexander, Hollis	1:05-CV-18716
Armbruster, Michael D.	1:05-CV-18760
Bunch, Albert	1:04-CV-17031
Bunch, Ray R.	1:05-CV-18616
Cottrill, James R.	1:05-CV-18613
Diaz, Robert	1:04-CV-18548
Edwards, Gerald	1:05-CV-18608
Fair, Lonnie Lee	1:05-CV-18602
Goodin, Leon L.	1:05-CV-17135
Hayes, Reginald	1:06-CV-17136
Hinton, James	1:05-CV-18776
Jones, Lawrence	1:05-CV-18620
Lightsey, Charles E.	1:05-CV-18154
Louisville, Oris	1:05-CV-17676
Manning, Lyle	1:05-CV-18724
Martin, Robert	1:04-CV-17285
McGee, William W.	1:05-CV-18611
Moore, Raymond K.	1:05-CV-18603
Morales, Joel	1:05-CV-18614
Mullins, Jerry D.	1:04-CV-18539
Nelson, Donnald L.	1:05-CV-18609
Parrish, Timothy L.	1:05-CV-18606

Client Name	Cause Number
Perkins, William Terry	1:04-CV-17278
Pittman, Wilford Lee	1:05-CV-18746
Ranson, Travis S.	1:05-CV-18601
Reed, Thomas A.	1:05-CV-18050
Reid, McArthur	1:06-CV-17134
Rodriguez, Roger	1:05-CV-17183
Semento, Harry	1:06-CV-17169
Silmon, James	1:05-CV-18846
Smolder, Michael S.	1:05-CV-18607
Taylor, Roy L.	1:05-CV-18598
Thomas, Robert	1:05-CV-17131
Thornburg, Cecil	1:05-CV-17342
Ullfers, Bradley	1:05-CV-18759
Verdine, Kenneth	1:05-CV-18612
Welch, William	1:05-CV-18668
Wingate, Danny	1:05-CV-18615
Ynfante, Juan Arredondo	1:05-CV-18617
Zinnerman, Roosevelt	1:05-CV-18719